

[Report No. 94-354]

[Report No. 94-381]

IN THE SENATE OF THE UNITED STATES

JANUARY 15, 1975

Mr. CHILES (for himself, Mr. ABOUREZK, Mr. BAYH, Mr. BEALL, Mr. BIDEN, Mr. BROCK, Mr. BROOKE, Mr. CASE, Mr. CHURCH, Mr. CLARK, Mr. CRANSTON, Mr. GRAVEL, Mr. GARY W. HART, Mr. PHILIP A. HART, Mr. HASKELL, Mr. HATFIELD, Mr. HATHAWAY, Mr. HELMS, Mr. HOLLINGS, Mr. HUMPHREY, Mr. JACKSON, Mr. LEAHY, Mr. MCGOVERN, Mr. MANSFIELD, Mr. MATHIAS, Mr. METCALF, Mr. MONDALE, Mr. MUSKIE, Mr. NELSON, Mr. NUNN, Mr. PACKWOOD, Mr. PERCY, Mr. PROXMIRE, Mr. RIBICOFF, Mr. ROTH, Mr. STAFFORD, Mr. STONE, Mr. SYMINGTON, Mr. TUNNEY, and Mr. WEICKER) introduced the following bill; which was read twice and referred to the Committee on Government Operations

JULY 31, 1975

Reported by Mr. CHILES, with an amendment

[Strike out all after the enacting clause and insert the part printed in italic]

AUGUST 1, 1975

Referred jointly to the Committees on Rules and Administration and the Judiciary with instructions to report back not later than September 19, 1975

SEPTEMBER 18 (legislative day, SEPTEMBER 11), 1975

Reported by Mr. CANNON, from the Committee on Rules and Administration, with an additional amendment

[Omit the part in linetype italics]

A BILL

To provide that meetings of Government agencies and of congressional committees shall be open to the public, and for other purposes.

- 1 *Be it enacted by the Senate and House of Representa-*
- 2 *tives of the United States of America in Congress assembled,*
- 3 ~~SECTION 1. SHORT TITLE. This Act may be cited as~~
- 4 ~~the "Government in the Sunshine Act".~~

1 SEC. 2. DECLARATION OF POLICY.—It is hereby de-
2 clared to be the policy of the United States that the public
3 is entitled to the fullest practicable information regarding
4 the decisionmaking processes of the Federal Government.

5 SEC. 3. DEFINITIONS.—For purposes of this Act—

6 (1) “National defense” means—

7 ~~(A) the protection of the United States and its~~
8 ~~military forces against actual or potential military~~
9 ~~attack by a foreign power;~~

10 ~~(B) the obtaining of foreign intelligence informa-~~
11 ~~tion deemed essential to the military defense of the~~
12 ~~United States or its forces;~~

13 ~~(C) the protection of information essential to the~~
14 ~~military defense of the United States or its forces against~~
15 ~~foreign intelligence activities; or~~

16 ~~(D) the protection, to the extent specifically found~~
17 ~~necessary by the President in writing, of the United~~
18 ~~States against overthrow of the Government by force;~~
19 ~~and~~

20 (2) “Person” includes an individual, partnership, cor-
21 poration, associated governmental authority, or public or
22 private organization.

23 ~~TITLE I—CONGRESSIONAL PROCEDURES~~

24 ~~SEC. 101. SENATE COMMITTEE HEARING PRO-~~
25 ~~CEDURE. (a) The Legislative Reorganization Act of 1946~~
26 ~~is amended—~~

1 ~~(1) by striking out the third sentence of section~~
 2 ~~133(b);~~

3 ~~(2) by striking out subsections (a), (b), and (f)~~
 4 ~~of section 133A;~~

5 ~~(3) by adding after section 133B the following:~~

6 ~~"OPEN SENATE COMMITTEE MEETINGS~~

7 ~~"SEC. 133C. (a) Each meeting of each standing, select,~~
 8 ~~or special committee of the Senate, or subcommittee thereof,~~
 9 ~~including meetings to conduct hearings, shall be open to the~~
 10 ~~public: *Provided*, That a portion or portions of such meet-~~
 11 ~~ings may be closed to the public if the committee or subcom-~~
 12 ~~mittee, as the case may be, determines by a vote of a majority~~
 13 ~~of a quorum of the committee or subcommittee present that~~
 14 ~~the matters to be discussed or the testimony to be taken at~~
 15 ~~such portion or portions—~~

16 ~~"(1) will disclose matters necessary to be kept~~
 17 ~~secret in the interests of national defense or the neces-~~
 18 ~~sarily confidential conduct of the foreign policy of the~~
 19 ~~United States;~~

20 ~~"(2) will relate solely to matters of committee staff~~
 21 ~~personnel or internal staff management or administra-~~
 22 ~~-tion;~~

23 ~~"(3) will tend to charge with crime or misconduct,~~
 24 ~~or to disgrace any person, or will represent a clearly~~
 25 ~~unwarranted invasion of the privacy of any individual:~~
 26 ~~*Provided*, That this paragraph shall not apply to any~~

1 ~~Government officer or employee with respect to his of-~~
2 ~~ficial duties or employment: And provided further, That~~
3 ~~as applied to a witness at a meeting, this paragraph~~
4 ~~shall not apply unless the witness requests in writing that~~
5 ~~the hearing be closed to the public;~~

6 ~~"(4) will disclose information pertaining to any in-~~
7 ~~vestigation conducted for law enforcement purposes, but~~
8 ~~only to the extent that the disclosure would (A) inter-~~
9 ~~fere with enforcement proceedings, (B) deprive a per-~~
10 ~~son of a right to a fair trial or an impartial adjudication,~~
11 ~~(C) disclose the identity of a confidential source and,~~
12 ~~in the case of a record compiled by a criminal law en-~~
13 ~~forcement authority in the course of a criminal investi-~~
14 ~~gation, or by an agency conducting a lawful national~~
15 ~~security intelligence investigation, confidential informa-~~
16 ~~tion furnished only by the confidential source, (D) dis-~~
17 ~~close investigative techniques and procedures, or (E)~~
18 ~~endanger the life or physical safety of law enforcement~~
19 ~~personnel; or~~

20 ~~"(5) will disclose information relating to the trade~~
21 ~~secrets or financial or commercial information pertaining~~
22 ~~specifically to a given person where~~

23 ~~"(A) a Federal statute requires the informa-~~
24 ~~tion to be kept confidential by Government officers~~
25 ~~and employees; or~~

26 ~~"(B) the information has been obtained by the~~

1 ~~Federal Government on a confidential basis other~~
2 ~~than through an application by such person for a~~
3 ~~specific Government financial or other benefit, and~~
4 ~~the information must be kept secret in order to pre-~~
5 ~~vent grave and irreparable injury to the competitive~~
6 ~~position of such person.~~

7 ~~A separate vote of the committee shall be taken with respect~~
8 ~~to each committee or subcommittee meeting a portion or por-~~
9 ~~tions of which are proposed to be closed to the public pur-~~
10 ~~suant to this subsection. The vote of each committee member~~
11 ~~participating in each such vote shall be recorded and no~~
12 ~~proxies shall be allowed. Within one day of such vote, the~~
13 ~~committee shall make publicly available a written copy of~~
14 ~~such vote and, if a meeting or portion thereof is closed to the~~
15 ~~public, a full written explanation of its action.~~

16 ~~“(b) Each standing, select, or special committee of the~~
17 ~~Senate, or subcommittee thereof, shall make public announce-~~
18 ~~ment of the date, place, and subject matter of each meeting~~
19 ~~at least one week before such meeting unless the committee~~
20 ~~or subcommittee determines by a vote of a majority of a~~
21 ~~quorum of the committee or subcommittee present that com-~~
22 ~~mittee business requires that such meeting be called at an~~
23 ~~earlier date, in which case the committee shall make public~~
24 ~~announcement of the date, place, and subject matter of such~~
25 ~~meeting at the earliest practicable opportunity.~~

26 ~~“(c) A complete transcript shall be made of each meet-~~

~~ing of each standing, select, or special committee or subcommittee (whether open or closed to the public). Except as provided in subsection (d) of this section, a copy of each such transcript shall be made available for public inspection within seven days of each such meeting, and additional copies of any transcript shall be furnished to any person at the actual cost of duplication. Notwithstanding the provisions of subsection (d), in the case of meetings closed to the public, the portion of such transcript made available for public inspection shall include a list of all persons attending and their affiliation, except for any portion of such list which would disclose the identity of a confidential source, or endanger the life or physical safety of law enforcement personnel.~~

~~“(d) In the case of meetings closed to the public pursuant to subsection (a) of this section, the committee or subcommittee may delete from the copies of transcripts that are required to be made available or furnished to the public pursuant to subsection (e) of this section, those portions which it determines by vote of the majority of a quorum of the committee or subcommittee consist of materials specified in paragraph (1), (2), (3), (4), or (5) of subsection (a) of this section. A separate vote of the committee or subcommittee shall be taken with respect to the transcript of each such meeting. The vote of each committee or subcommittee member participating in each such vote shall be recorded and published and no proxies shall be allowed. In~~

~~1 place of each portion deleted from copies of the transcript
2 made available to the public, the committee or subcommittee
3 shall supply a full written explanation of why such portion
4 was deleted, and a summary of the substance of the deleted
5 portion that does not itself disclose information specified in
6 paragraph (1), (2), (3), (4), or (5) of subsection (a).
7 The committee or subcommittee shall maintain a complete
8 copy of the transcript of each meeting (including those por-
9 tions deleted from copies made available to the public), for
10 a period of at least one year after such meeting, or until
11 the Congress following the one in which such meeting was
12 held is assembled, whichever occurs later.~~

~~13 “(e) A point of order may be raised in the Senate
14 against any committee or subcommittee vote to close a meet-
15 ing to the public pursuant to subsection (a) of this section,
16 or against any committee or subcommittee vote to delete
17 from the publicly available copy a portion of a meeting tran-
18 script pursuant to subsection (d) of this section, by com-
19 mittee or subcommittee members comprising one fourth or
20 more of the total number of members of such committee or
21 subcommittee present and voting for or against such action.
22 Any such point of order shall be raised in the Senate within
23 two calendar days after the vote against which the point
24 of order is raised, and such point of order shall be a
25 matter of highest personal privilege. Each such point of~~

1 ~~order shall immediately be referred to a Select Committee~~
2 ~~on Meetings consisting of the President pro tempore, the~~
3 ~~leader of the majority party, and the leader of the minority~~
4 ~~party. The select committee shall examine the complete~~
5 ~~verbatim transcript of the meeting in question and shall rule~~
6 ~~whether the vote to close the meeting was in accordance~~
7 ~~with subsection (a) of this section, or whether the vote to~~
8 ~~delete a portion or portions from publicly available copies~~
9 ~~of the meeting transcript was in accordance with subsection~~
10 ~~(d) of this section, as the case may be. The select committee~~
11 ~~shall report to the Senate within five calendar days (ex-~~
12 ~~cluding days where the Senate is not in session) a resolu-~~
13 ~~tion containing its findings. If the Senate adopts a resolution~~
14 ~~finding that the committee vote in question was not in~~
15 ~~accordance with the relevant subsection, it shall direct that~~
16 ~~there be made publicly available the entire transcript of~~
17 ~~the meeting improperly closed to the public or the portion~~
18 ~~or portions of any meeting transcript improperly deleted~~
19 ~~from the publicly available copy, as the case may be.~~

20 ~~“(f) The Select Committee on Meetings shall not be~~
21 ~~subject to the provisions of subsection (a), (b), (c), or~~
22 ~~(d) of this section.”~~

23 ~~(b) Subsection (a) of subsection 242 of the Legislative~~
24 ~~Reorganization Act of 1970 is repealed.~~

1 ~~(c) Paragraph 7 (b) of Rule XXV of the Standing~~
 2 ~~Rules of the Senate is repealed.~~

3 ~~(d) Title I of the table of contents of the Legislative~~
 4 ~~Reorganization Act of 1946 is amended by inserting imme-~~
 5 ~~diately below item 133B the following:~~

~~"133C. Open Senate committee meetings."~~

6 ~~SEC. 102. Clause 27 (f) (2) of Rule XI of the Rules of~~
 7 ~~the House of Representatives is amended to read as follows:~~

8 ~~"(2) (A) Each meeting of each standing, select, or~~
 9 ~~special committee or subcommittee, including meetings to~~
 10 ~~conduct hearings, shall be open to the public: *Provided*, That~~
 11 ~~a portion or portions of such meetings may be closed to the~~
 12 ~~public if the committee or subcommittee, as the case may be,~~
 13 ~~determines by vote of a majority of a quorum of the com-~~
 14 ~~mittee or subcommittee present that the matters to be dis-~~
 15 ~~cussed or the testimony to be taken at such portion or~~
 16 ~~portions—~~

17 ~~"(i) will disclose matters necessary to be kept~~
 18 ~~secret in the interests of national defense or the neces-~~
 19 ~~sarily confidential conduct of the foreign policy of the~~
 20 ~~United States;~~

21 ~~"(ii) will relate solely to matters of committee staff~~
 22 ~~personnel or internal staff management or administra-~~
 23 ~~tion;~~

1 ~~“(iii) will tend to charge with crime or misconduct,~~
2 ~~or to disgrace any person, or will represent a clearly~~
3 ~~unwarranted invasion of the privacy of any individual:~~
4 ~~Provided, That this paragraph shall not apply to any~~
5 ~~Government officer or employee with respect to his offi-~~
6 ~~cial duties or employment: And provided further, That~~
7 ~~as applied to a witness at a meeting, this paragraph shall~~
8 ~~not apply unless the witness requests in writing that the~~
9 ~~hearing be closed to the public;~~

10 ~~“(iv) will disclose information pertaining to any~~
11 ~~investigation conducted for law enforcement purposes,~~
12 ~~but only to the extent that the disclosure would (A)~~
13 ~~interfere with enforcement proceedings, (B) deprive~~
14 ~~a person of a right to a fair trial or an impartial adjudica-~~
15 ~~tion, (C) disclose the identity of a confidential source~~
16 ~~and, in the case of a record compiled by a criminal law~~
17 ~~enforcement authority in the course of a criminal investi-~~
18 ~~gation, or by an agency conducting a lawful national~~
19 ~~security intelligence investigation, confidential informa-~~
20 ~~tion furnished only by the confidential source, (D) dis-~~
21 ~~close investigative techniques and procedures, or (E)~~
22 ~~endanger the life or physical safety of law enforcement~~
23 ~~personnel; or~~

24 ~~“(v) will disclose information relating to the trade~~

1 ~~secrets or financial or commercial information pertain-~~
2 ~~ing specifically to a given person where~~

3 ~~“(I) a Federal statute requires the information-~~
4 ~~to be kept confidential by Government officers and~~
5 ~~employees; or~~

6 ~~“(II) the information has been obtained by the~~
7 ~~Federal Government on a confidential basis other~~
8 ~~than through an application by such person for a~~
9 ~~specific Government financial or other benefit, and~~
10 ~~the information must be kept secret in order to~~
11 ~~prevent grave and irreparable injury to the competi-~~
12 ~~tive position of such person.~~

13 ~~A separate vote of the committee shall be taken with respect~~
14 ~~to each committee or subcommittee meeting a portion or por-~~
15 ~~tions of which are proposed to be closed to the public pur-~~
16 ~~suant to this subsection. The vote of each committee member~~
17 ~~participating in each such vote shall be recorded and no~~
18 ~~proxies shall be allowed. Within one day of such vote, the~~
19 ~~committee shall make publicly available a written copy of~~
20 ~~such vote and, if a meeting or portion thereof is closed to~~
21 ~~the public, a full written explanation of its action.~~

22 ~~“(B) Each standing, select, or special committee or~~
23 ~~subcommittee shall make public announcement of the date,~~
24 ~~place, and subject matter of each meeting at least one week~~

~~1 before such meeting unless the committee or subcommittee
2 determines by a vote of a majority of a quorum of the com-
3 mittee or subcommittee present that committee business re-
4 quires that such meeting be called at an earlier date, in which
5 case the committee shall make public announcement of the
6 date, place, and subject matter of such meeting at the earliest
7 practicable opportunity.~~

~~8 “(C) A complete transcript shall be made of each meet-
9 ing of each standing, select, or special committee or subcom-
10 mittee (whether open or closed to the public). Except as
11 provided in paragraph (D), a copy of each such transcript
12 shall be made available for public inspection within seven
13 days of each such meeting, and additional copies of any tran-
14 script shall be furnished to any person at the actual cost of
15 duplication. Notwithstanding the provisions of paragraph
16 (D), in the case of meetings closed to the public, the portion
17 of such transcript made available for public inspection shall
18 include a list of all persons attending and their affiliation,
19 except for any portion of such list which would disclose
20 the identity of a confidential source, or endanger the
21 life or physical safety of law enforcement personnel.~~

~~22 “(D) In the case of meetings closed to the public pur-
23 suant to subparagraph (A), the committee or subcommittee
24 may delete from the copies of transcripts that are required
25 to be made available or furnished to the public pursuant to
26 subparagraph (C), portions which it determines by vote of~~

~~1 the majority of a quorum of the committee or subcom-~~
~~2 mittee consist of material specified in subsection (i), (ii),~~
~~3 (iii), (iv), or (v) of subparagraph (A). A separate vote~~
~~4 of the committee or subcommittee shall be taken with respect~~
~~5 to the transcript of such meeting. The vote of each committee~~
~~6 or subcommittee member participating in each such vote shall~~
~~7 be recorded and published, and no proxies shall be allowed.~~
~~8 In place of each portion deleted from copies of the transcript~~
~~9 made available to the public, the committee or subcommittee~~
~~10 shall supply a full written explanation of why such por-~~
~~11 tion was deleted and a summary of the substance of the~~
~~12 deleted portion that does not itself disclose information speci-~~
~~13 fied in subsection (i), (ii), (iii), (iv), or (v) of subpara-~~
~~14 graph (A). The committee or subcommittee shall main-~~
~~15 tain a complete copy of the transcript of each meeting (in-~~
~~16 cluding those portions deleted from copies made available to~~
~~17 the public), for a period of at least one year after such~~
~~18 meeting, or until the Congress following the one in which~~
~~19 such meeting was held is assembled, whichever occurs later.~~
~~20 “(E) A point of order may be raised against any com-~~
~~21 mittee or subcommittee vote to close a meeting to the public~~
~~22 pursuant to subparagraph (A), or against any committee or~~
~~23 subcommittee vote to delete from the publicly available copy~~
~~24 a portion of a meeting transcript pursuant to subparagraph~~
~~25 (D), by committee or subcommittee members comprising~~

~~1 one fourth or more of the total number of the members of~~
~~2 such committee or subcommittee present and voting for or~~
~~3 against such action. Any such point of order must be raised~~
~~4 before the entire House within two calendar days after the~~
~~5 vote against which the point of order is raised, and such point~~
~~6 of order shall be a matter of highest personal privilege. Each~~
~~7 such point of order shall immediately be referred to a Select~~
~~8 Committee on Meetings consisting of the Speaker of the~~
~~9 House of Representatives, the majority leader, and the mi-~~
~~10 nority leader. The select committee shall report to the House~~
~~11 within five calendar days (excluding days where the House~~
~~12 is not in session) a resolution containing its findings. If the~~
~~13 House adopts a resolution finding that the committee vote in~~
~~14 question was not in accordance with the relevant subsection,~~
~~15 it shall direct that there be made publicly available the entire~~
~~16 transcript of the meeting improperly closed to the public or~~
~~17 the portion or portions of any meeting transcript improperly~~
~~18 deleted from the publicly available copy.~~

~~19 “(F) The Select Committee on Meetings shall not be~~
~~20 subject to the provisions of subparagraph (A), (B), (C),~~
~~21 or (D) of this section.”~~

~~22 SEC. 103. (a) JOINT AND CONFERENCE COMMIT-~~
~~23 TEES. The Legislative Reorganization Act of 1946 is~~
~~24 amended by inserting after section 133C, as added by sec-~~
~~25 tion 101(3) of this Act, the following new section:~~

1 ~~“OPEN JOINT AND CONFERENCE COMMITTEE MEETINGS~~

2 ~~“SEC. 133D. (a) Each meeting of each joint committee~~
 3 ~~and each subcommittee thereof, and each committee of con-~~
 4 ~~ference shall be open to the public: *Provided*, That a por-~~
 5 ~~tion or portions of such meetings may be closed to the public~~
 6 ~~if the committee determines by vote of a majority of a quo-~~
 7 ~~rum of the committee or subcommittee present that the~~
 8 ~~matters to be discussed or the testimony to be taken at such~~
 9 ~~portion or portions—~~

10 ~~“(1) will disclose matters necessary to be kept secret~~
 11 ~~in the interests of national defense or the necessarily~~
 12 ~~confidential conduct of the foreign policy of the United~~
 13 ~~States;—~~

14 ~~“(2) will relate solely to matters of committee staff~~
 15 ~~personnel or internal staff management or administration;—~~

16 ~~“(3) will tend to charge with crime or misconduct,~~
 17 ~~or to disgrace any person, or will represent a clearly~~
 18 ~~unwarranted invasion of the privacy of any individual:—~~
 19 ~~*Provided*, That this paragraph shall not apply to any~~
 20 ~~Government officer or employee with respect to his of-~~
 21 ~~ficial duties or employment: *And provided further*, That~~
 22 ~~as applied to a witness at a meeting, this paragraph shall~~
 23 ~~not apply unless the witness requests in writing that the~~
 24 ~~hearing be closed to the public;—~~

25 ~~“(4) will disclose information pertaining to any~~

1 ~~investigation conducted for law enforcement purposes,~~
2 ~~but only to the extent that the disclosure would (A) in-~~
3 ~~terfere with enforcement proceedings, (B) deprive a~~
4 ~~person of a right to a fair trial or an impartial adjud-~~
5 ~~cation, (C) disclose the identity of a confidential source~~
6 ~~and, in the case of a record compiled by a criminal law~~
7 ~~enforcement authority in the course of a criminal investi-~~
8 ~~gation, or by an agency conducting a lawful national~~
9 ~~security intelligence investigation, confidential informa-~~
10 ~~tion furnished only by the confidential source, (D)~~
11 ~~disclose investigative techniques and procedures, or (E)~~
12 ~~endanger the life or physical safety of law enforcement~~
13 ~~personnel; or~~

14 ~~“(5) will disclose information relating to the trade~~
15 ~~secrets or financial or commercial information pertaining~~
16 ~~specifically to a given person where—~~

17 ~~“(A) a Federal statute requires the informa-~~
18 ~~tion to be kept confidential by Government officers~~
19 ~~and employees; or~~

20 ~~“(B) the information has been obtained by the~~
21 ~~Federal Government on a confidential basis other~~
22 ~~than through an application by such person for a~~
23 ~~specific Government financial or other benefit, and~~
24 ~~the information must be kept secret in order to pre-~~

1 ~~vent grave and irreparable injury to the competitive~~
2 ~~position of such person.~~

3 ~~A separate vote of the committee shall be taken with respect~~
4 ~~to each committee or subcommittee meeting a portion or~~
5 ~~portions of which are proposed to be closed to the public~~
6 ~~pursuant to this subsection. The vote of each committee~~
7 ~~member participating in each such vote shall be recorded~~
8 ~~and no proxies shall be allowed. Within one day of such~~
9 ~~vote, the committee shall make publicly available a written~~
10 ~~copy of such vote and, if a meeting or portion thereof is~~
11 ~~closed to the public, a full written explanation of its action.~~

12 ~~“(b) Each joint committee, subcommittee, and commit-~~
13 ~~tee of conference shall make public announcement of the~~
14 ~~date, place, and subject matter of each meeting at least one~~
15 ~~week before such meeting unless the committee or subcom-~~
16 ~~mittee determines by a vote of a majority of a quorum of~~
17 ~~the committee or subcommittee present that committee busi-~~
18 ~~ness requires that such meeting be called at an earlier date,~~
19 ~~in which case the committee shall make public announce-~~
20 ~~ment of the date, place, and subject matter of such meeting~~
21 ~~at the earliest practicable opportunity.~~

22 ~~“(c) A complete transcript shall be made of each meet-~~
23 ~~ing of each joint committee, subcommittee, and committee~~
24 ~~of conference (whether open or closed to the public). Ex-~~

~~1 except as provided in subsection (d) of this section, a copy~~
~~2 of each such transcript shall be made available for public~~
~~3 inspection within seven days of each such meeting, and addi-~~
~~4 tional copies of any transcript shall be furnished to any per-~~
~~5 son at the actual cost of duplication. Notwithstanding the~~
~~6 provisions of subsection (d), in the case of meetings closed~~
~~7 to the public, the portion of such transcript made available~~
~~8 for public inspection shall include a list of all persons~~
~~9 attending and their affiliation, except for any portion of~~
~~10 such list which would disclose the identity of a confidential~~
~~11 source, or endanger the life or physical safety of law enforce-~~
~~12 ment personnel.~~

~~13 “(d) In the case of meetings closed to the public pur-~~
~~14 suant to subsection (a) of this section, the joint committee,~~
~~15 subcommittee, or committee of conference may delete from~~
~~16 the copies of transcripts that are required to be made avail-~~
~~17 able or furnished to the public pursuant to subsection (c) of~~
~~18 this section, those portions which it determines by vote of the~~
~~19 majority of a quorum of the committee or subcommittee con-~~
~~20 sist of materials specified in paragraph (1), (2), (3), (4),~~
~~21 or (5) of subsection (a) of this section. A separate vote of~~
~~22 the committee or subcommittee shall be taken with respect to~~
~~23 the transcript of such meeting. The vote of each committee or~~
~~24 subcommittee member participating in each such vote shall~~
~~25 be recorded and published, and no proxies shall be allowed.~~
~~26 In place of each portion deleted from copies of the transcript~~

1 ~~made available to the public, the committee or subcommittee~~
2 ~~shall supply a full written explanation of why such portion~~
3 ~~was deleted, and a summary of the substance of the deleted~~
4 ~~portion that does not itself disclose information specified in~~
5 ~~paragraph (1), (2), (3), (4), or (5) of subsection (a) of~~
6 ~~this section. The committee or subcommittee shall maintain~~
7 ~~a complete copy of the transcript of each meeting (including~~
8 ~~those portions deleted from copies made available to the pub-~~
9 ~~lie), for a period of at least one year after such meeting, or~~
10 ~~until the Congress following the one in which such meeting~~
11 ~~was held is assembled, whichever occurs later.~~

12 ~~“(e) A point of order may be raised against any com-~~
13 ~~mittee vote of a joint committee, subcommittee, or committee~~
14 ~~of conference to close a meeting to the public pursuant to sub-~~
15 ~~section (a) of this section, or any committee or subcommittee~~
16 ~~vote to delete from the publicly available copy a portion of a~~
17 ~~meeting transcript pursuant to subsection (d) of this section~~
18 ~~by committee or subcommittee members comprising one~~
19 ~~fourth or more of the total number of the members of such~~
20 ~~committee or subcommittee present and voting for or against~~
21 ~~such action. Any such point of order shall be raised in either~~
22 ~~House within two calendar days after the vote against which~~
23 ~~the point of order is raised, and such point of order shall be~~
24 ~~a matter of highest personal privilege. Each such point of~~

1 ~~order shall immediately be referred to a Select Joint Com-~~
2 ~~mittee on Meetings consisting of the President pro tempore~~
3 ~~of the Senate, the Speaker of the House of Representatives,~~
4 ~~and the majority and minority leaders from each House. The~~
5 ~~select committee shall examine the complete verbatim tran-~~
6 ~~script of the meeting in question and shall rule whether the~~
7 ~~vote to close the meeting was in accordance with subsection~~
8 ~~(a) of this section, or whether the vote to delete a portion or~~
9 ~~portions from publicly available copies of the meeting tran-~~
10 ~~script was in accordance with subsection (d) of this section,~~
11 ~~as the case may be. The select committee shall report to both~~
12 ~~Houses a concurrent resolution within five calendar days~~
13 ~~(excluding days where either House is not in session) con-~~
14 ~~taining its findings. If both Houses adopt such a resolution~~
15 ~~finding that the committee vote in question was not in~~
16 ~~accordance with the relevant subsection, they shall direct~~
17 ~~that there be made publicly available the entire transcript of~~
18 ~~the meeting improperly closed to the public, or the portion~~
19 ~~or portions of any meeting transcript improperly deleted from~~
20 ~~the publicly available copy, as the case may be.~~

21 ~~“(f) The Select Joint Committee on Meetings shall not~~
22 ~~be subject to the provisions of subsection (a), (b), (c), or~~
23 ~~(d) of this section.”~~

24 ~~(b) Title I of the table of contents of the Legislative Re-~~
25 ~~organization Act of 1946 is amended by inserting immedi-~~

1 ~~ately below item 133C, as added by section 101(c) of this~~
 2 ~~Act, the following:~~

~~"133D. Open joint and conference committee meetings."~~

3 ~~SEC. 104. EXERCISE OF RULEMAKING POWERS. The~~
 4 ~~provisions of this title are enacted by the Congress—~~

5 ~~(1) as an exercise of the rulemaking power of the~~
 6 ~~Senate and the House of Representatives, respectively,~~
 7 ~~and as such they shall be considered as part of the rules~~
 8 ~~of each House, respectively, or of that House to which~~
 9 ~~they specifically apply, and such rules shall supersede~~
 10 ~~other rules only to the extent that they are inconsistent~~
 11 ~~therewith; and~~

12 ~~(2) with full recognition of the constitutional right~~
 13 ~~of either House to change such rules (so far as relating~~
 14 ~~to such House) at any time, in the same manner, and to~~
 15 ~~the same extent as in the case of any other rule of such~~
 16 ~~House.~~

17 ~~TITLE II—AGENCY PROCEDURES~~

18 ~~SEC. 201. (a) This section applies, according to the~~
 19 ~~provisions thereof, to any agency, as defined in section 551~~
 20 ~~(1) of title 5, United States Code, where the body compris-~~
 21 ~~ing the agency consists of two or more members. Except as~~
 22 ~~provided in subsection (b), all meetings (including meetings~~
 23 ~~to conduct hearings) of such agencies, or a subdivision there-~~
 24 ~~of authorized to take action on behalf of the agency, shall be~~

1 ~~open to the public. For purposes of this section, a meeting~~
2 ~~consists of any procedure by which official agency business is~~
3 ~~considered or discussed by at least the number of agency~~
4 ~~members (or of members of a subdivision of the agency au-~~
5 ~~thorized to take action on behalf of the agency), required to~~
6 ~~take action on behalf of the agency.~~

7 ~~(b) Subsection (a) shall not apply to any portion or~~
8 ~~portions of an agency meeting where the agency determines~~
9 ~~by a vote of a majority of its entire membership, or, in the~~
10 ~~case of a subdivision thereof authorized to take action on~~
11 ~~behalf of the agency, a majority of the membership of such~~
12 ~~subdivision, that such portion or portions of the meeting~~

13 ~~(1) will disclose matters necessary to be kept secret~~
14 ~~in the interests of national defense or the necessarily con-~~
15 ~~fidential conduct of the foreign policy of the United~~
16 ~~States;~~

17 ~~(2) will relate solely to individual agency person-~~
18 ~~nel or to internal agency office management and adminis-~~
19 ~~tration or financial auditing;~~

20 ~~(3) will tend to charge with crime or misconduct,~~
21 ~~or to disgrace any person, or will represent a clearly~~
22 ~~unwarranted invasion of the privacy of any individual.~~
23 ~~Provided, That this paragraph shall not apply to any~~
24 ~~Government officer or employee with respect to his offi-~~
25 ~~cial duties or employment: And provided further, That~~

1 ~~as applied to a witness at a meeting this paragraph shall~~
2 ~~not apply unless the witness requests in writing that the~~
3 ~~meeting be closed to the public;~~

4 ~~(4) will disclose information pertaining to any in-~~
5 ~~vestigation conducted for law enforcement purposes, but~~
6 ~~only to the extent that the disclosure would (A) inter-~~
7 ~~fere with enforcement proceedings, (B) deprive a per-~~
8 ~~son of a right to a fair trial or an impartial adjudication,~~
9 ~~(C) disclose the identity of a confidential source and, in~~
10 ~~the case of a record compiled by a criminal law enforce-~~
11 ~~ment authority in the course of a criminal investigation,~~
12 ~~or by an agency conducting a lawful national security~~
13 ~~intelligence investigation, confidential information fur-~~
14 ~~nished only by the confidential source, (D) disclose~~
15 ~~investigative techniques and procedures, (E) endanger~~
16 ~~the life or physical safety of law enforcement personnel;~~
17 ~~or (F) in the case of an agency authorized to regulate~~
18 ~~the issuance or trading of securities, disclose informa-~~
19 ~~tion concerning such securities, or the markets in which~~
20 ~~they are traded, when such information must be kept~~
21 ~~confidential in order to avoid premature speculation in~~
22 ~~the trading of such securities; or~~

23 ~~(5) will disclose information relating to the trade~~
24 ~~secrets or financial or commercial information pertain-~~
25 ~~ing specifically to a given person where—~~

1 ~~(A) a Federal statute requires the information~~
2 ~~to be kept confidential by Government officers and~~
3 ~~employees; or~~

4 ~~(B) the information has been obtained by the~~
5 ~~Federal Government on a confidential basis other~~
6 ~~than through an application by such person for a~~
7 ~~specific Government financial or other benefit and~~
8 ~~the information must be kept secret in order to pre-~~
9 ~~vent grave and irreparable injury to the competitive~~
10 ~~position of such person;~~

11 ~~(6) will relate to the conduct or disposition (but~~
12 ~~not the initiation) of a case of adjudication governed by~~
13 ~~the provisions of the first paragraph of section 554 (a)~~
14 ~~of title 5, United States Code, or of subsection (1),~~
15 ~~(2), (4), (5), or (6) thereof.~~

16 ~~A separate vote of the agency members, or the members of~~
17 ~~a subdivision thereof authorized to take action on behalf of~~
18 ~~the agency, shall be taken with respect to each agency~~
19 ~~meeting a portion or portions of which are proposed to~~
20 ~~be closed to the public pursuant to this subsection. The vote~~
21 ~~of each agency member participating in such vote shall be~~
22 ~~recorded and no proxies shall be allowed. Within one day of~~
23 ~~such vote, the agency shall make publicly available a written~~
24 ~~copy of such vote and, if a meeting or portion thereof is closed~~
25 ~~to the public, a full written explanation of its action.~~

~~1 (c) Each agency shall make public announcement of
2 the date, place, and subject matter of each meeting, and
3 whether open or closed to the public, at least one week before
4 each meeting. Such announcement shall be made unless the
5 agency determines by a vote of the majority of its members,
6 or in the case of a subdivision thereof authorized to take
7 action on behalf of the agency, a majority of the members of
8 the subdivision, that agency business requires that such meet-
9 ings be called at an earlier date, in which case the agency
10 shall make public announcement of the date, place, and sub-
11 ject matter of such meeting, and whether open or closed to
12 the public, at the earliest practicable opportunity.~~

~~13 (d) A complete transcript or electronic recording ad-
14 equate to fully record the proceedings shall be made of each
15 meeting of each agency (whether open or closed to the pub-
16 lic). Except as provided in subsection (c) of this section a
17 copy of the transcript or electronic recording of each such
18 meeting, together with any official minutes of such meeting,
19 shall be made available to the public for inspection, and
20 additional copies of any such transcript, minutes, or record-
21 ing (or a copy of a transcription of the electronic recording),
22 shall be furnished to any person at the actual cost of dupli-
23 cation or transcription. Notwithstanding the provisions of sub-
24 section (c), in the case of meetings closed to the public,
25 the portion of such transcript made available for public
26 inspection or electronic recording shall include a list~~

1 ~~of all persons attending and their affiliation, except for any~~
2 ~~portion of such list which would disclose the identity of a~~
3 ~~confidential source, or endanger the life or physical safety~~
4 ~~of law enforcement personnel.~~

5 ~~(c) In the case of meetings closed to the public pursuant~~
6 ~~to subsection (b) of this section, the agency may delete from~~
7 ~~the copies of transcripts, electronic recordings, and minutes~~
8 ~~made available or furnished to the public pursuant to subsec-~~
9 ~~tion (d) of this section, those portions which the agency~~
10 ~~determines by vote of a majority of its membership consist~~
11 ~~of materials specified in paragraph (1), (2), (3), (4),~~
12 ~~(5), or (6) of subsection (b) of this section. A separate~~
13 ~~vote of the agency shall be taken with respect to each tran-~~
14 ~~script, electronic recording, or minutes. The vote of each~~
15 ~~agency member participating in such vote shall be recorded~~
16 ~~and published, and no proxies shall be allowed. In place of~~
17 ~~each portion deleted from copies of the meeting transcript,~~
18 ~~electronic recording, and minutes made available to the pub-~~
19 ~~lic, the agency shall supply a full written explanation of why~~
20 ~~such portion was deleted and a summary of the substance of~~
21 ~~the deleted portion that does not itself disclose information~~
22 ~~specified in paragraph (1), (2), (3), (4), (5), or (6) of~~
23 ~~subsection (b). The agency shall maintain a complete ver-~~
24 ~~batim copy of the transcript, or a complete electronic record-~~
25 ~~ing of each meeting (including those portions deleted from~~

1 ~~copies made available to the public), for a period of at least~~
2 ~~two years after such meeting, or until one year after the con-~~
3 ~~clusion of any proceeding with respect to which the meeting,~~
4 ~~or a portion thereof, was held, whichever occurs later.~~

5 ~~(f) Each agency subject to the requirements of this sec-~~
6 ~~tion shall, within three hundred and sixty days after the en-~~
7 ~~actment of this Act, following consultation with the Ad-~~
8 ~~ministrative Conference of the United States and published~~
9 ~~notice in the Federal Register of at least thirty days and~~
10 ~~opportunity for written comment by any persons, promulgate~~
11 ~~regulations to implement the requirements of subsections (a)~~
12 ~~through (e) inclusive of this section. Such regulations must,~~
13 ~~prior to final promulgation, receive the approval in writing~~
14 ~~of the Assistant Attorney General, office of Legal Counsel,~~
15 ~~certifying that in his opinion the regulations are in accord~~
16 ~~with the requirements of this section. Any citizen or person~~
17 ~~resident in the United States may bring a proceeding in the~~
18 ~~United States Court of Appeals for the District of Columbia~~
19 ~~Circuit—~~

20 ~~(1) to require an agency to promulgate such regu-~~
21 ~~lations if such agency has not promulgated such regu-~~
22 ~~lations within the time period specified herein; or~~

23 ~~(2) to set aside agency regulations issued pursu-~~
24 ~~ant to this subsection that are not in accord with the~~
25 ~~requirements of subsections (a) through (e) inclusive~~

1 ~~of this section, and to require the promulgation of~~
2 ~~regulations that are in accord with such subsections.~~

3 ~~(g) The district courts of the United States shall have~~
4 ~~jurisdiction to enforce the requirements of subsections (a)~~
5 ~~through (e) inclusive of this section by declaratory judg-~~
6 ~~ment, injunctive relief, or otherwise. Such actions shall~~
7 ~~be brought within sixty days after the meeting whose closing~~
8 ~~is challenged as a violation of this section: *Provided*, That if~~
9 ~~public notice of such meeting was not provided by the agency~~
10 ~~in accordance with the requirements of this section, such~~
11 ~~action shall be brought within sixty days of such meeting~~
12 ~~or such public announcement, whichever is the later. Such~~
13 ~~actions shall be brought against an agency and its members~~
14 ~~by any citizen or person resident in the United States. Such~~
15 ~~actions may be brought in the district wherein the plaintiff~~
16 ~~resides, or has his principal place of business, or where the~~
17 ~~agency in question has its headquarters. In such actions a~~
18 ~~defendant shall serve his answer within twenty days after~~
19 ~~the service of the complaint. The burden is on the agency to~~
20 ~~sustain its action. Except as to causes the court considers~~
21 ~~of greater importance, proceedings before the district court,~~
22 ~~as authorized by this paragraph, take precedence on the~~
23 ~~docket over all other causes and shall be assigned a hearing~~
24 ~~and trial at the earliest practicable date and expedited in~~
25 ~~every way. In deciding such cases the court may examine~~

1 ~~any portion of a meeting transcript or electronic recording~~
2 ~~that was deleted from the publicly available copy and may~~
3 ~~take such additional evidence as it deems necessary. Among~~
4 ~~other forms of equitable relief, including the granting of an~~
5 ~~injunction against future violations of this section, the court~~
6 ~~may require that any portion of a meeting transcript or elec-~~
7 ~~tronic recording improperly deleted from the publicly avail-~~
8 ~~able copy be made publicly available for inspection and copy-~~
9 ~~ing, and, having due regard for orderly administration and~~
10 ~~the public interest, may set aside any agency action taken~~
11 ~~or discussed at an agency meeting improperly closed to the~~
12 ~~public. The jurisdiction of the district courts under this sub-~~
13 ~~section shall be concurrent with that of any other court other-~~
14 ~~wise authorized by law to review agency action. Any such~~
15 ~~court may, at the application of any person otherwise prop-~~
16 ~~erly a party to a proceeding before such court to review an~~
17 ~~agency action, inquire into asserted violations by the agency~~
18 ~~of the requirements of this section and afford the relief au-~~
19 ~~thorized by this section in the case of proceedings by district~~
20 ~~courts.~~

21 ~~(h) In any action brought pursuant to subsection (f)~~
22 ~~or (g) of this section, the reasonable costs of litigation (in-~~
23 ~~cluding reasonable fees for attorneys and expert witnesses)~~
24 ~~may be apportioned to the original parties or their successors~~
25 ~~in interest whenever the court determines such award is ap-~~

1 ~~propriate. In the case of apportionment of costs against an~~
 2 ~~agency or its members, the costs may be assessed by the~~
 3 ~~court against the United States.~~

4 ~~(i) The agencies subject to the requirements of this~~
 5 ~~section shall annually report to Congress regarding their~~
 6 ~~compliance with such requirements, including a tabulation~~
 7 ~~of the total number of agency meetings open to the public,~~
 8 ~~the total number of meetings closed to the public, the rea-~~
 9 ~~sons for closing such meetings, and a description of any~~
 10 ~~litigation brought against the agency under this section.~~

11 ~~SEC. 202. Title 5 of the United States Code is amended~~
 12 ~~by adding after section 557 the following:~~

13 ~~"EX PARTE COMMUNICATIONS IN AGENCY PROCEEDING~~

14 ~~"SEC. 557A. (a) DEFINITIONS. For purposes of this~~
 15 ~~section—~~

16 ~~"(1) 'Ex parte communication' means a com-~~
 17 ~~munication relevant to an on-the-record agency pro-~~
 18 ~~ceeding where such communication is not made on the~~
 19 ~~record, or openly at a scheduled hearing session in such~~
 20 ~~proceeding, and reasonable notice thereof is not given to~~
 21 ~~all parties to, or intervenors in, such proceedings.~~

22 ~~"(2) 'Interested person' means any person (includ-~~
 23 ~~ing a member or employee of any Government agency or~~
 24 ~~authority) other than a member or employee of the~~

1 ~~agency before which the on-the-record proceeding is~~
 2 ~~pending who communicates with an agency member or~~
 3 ~~employee with respect to any such on-the-record agency~~
 4 ~~proceeding.~~

5 ~~“(3) ‘On-the-record agency proceeding’ means any~~
 6 ~~proceedings before any agency where the agency action,~~
 7 ~~or a portion thereof, is required by law to be determined~~
 8 ~~on the record after an opportunity for an agency hearing.~~

9 ~~“(b) This section applies to any on-the-record agency~~
 10 ~~proceeding.~~

11 ~~“(c) In any agency proceeding which is subject to sub-~~
 12 ~~section (b) of this section—~~

13 ~~“(1) no interested person shall make or cause to be~~
 14 ~~made to any member of the agency in question, adminis-~~
 15 ~~trative judge, or employee who is or may be involved in~~
 16 ~~the decisional process of the proceeding any ex parte~~
 17 ~~communication;~~

18 ~~“(2) no member of the agency in question, adminis-~~
 19 ~~trative judge, or employee who is or may be involved in~~
 20 ~~the decisional process of the proceeding shall make or~~
 21 ~~cause to be made to an interested person any ex parte~~
 22 ~~communication;~~

23 ~~“(3) a member of the agency in question, adminis-~~
 24 ~~trative judge, or employee who is or may be involved~~

1 ~~in the decisional process of the proceeding, who receives~~
 2 ~~a communication in violation of this subsection, shall~~
 3 ~~place in the public record of the proceeding—~~

4 ~~“(A) any written material submitted in viola-~~
 5 ~~tion of this subsection; and~~

6 ~~“(B) a memorandum stating the substance of~~
 7 ~~each oral communication submitted in violation of~~
 8 ~~this subsection; and~~

9 ~~“(C) responses, if any, to the materials de-~~
 10 ~~scribed in subparagraphs (A) and (B) of this~~
 11 ~~subsection;~~

12 ~~“(4) upon obtaining knowledge of a communica-~~
 13 ~~tion in violation of this subsection prompted by or from~~
 14 ~~a party or intervenors to any proceeding to which this~~
 15 ~~section applies, the agency members or member, the~~
 16 ~~administrative judge, or employee presiding at the hear-~~
 17 ~~ings may, to the extent consistent with the interests of~~
 18 ~~justice and the policy of the underlying statutes, require~~
 19 ~~the party or intervenors to show cause why his claim~~
 20 ~~or interest in the proceeding should not be dismissed,~~
 21 ~~denied, disregarded, or otherwise adversely affected by~~
 22 ~~virtue of such violation.~~

23 ~~“(d) The prohibitions of this section shall not apply—~~

24 ~~“(1) to any proceeding to the extent required for~~
 25 ~~the disposition of ex parte matters as authorized by law;~~

1 ~~“(2) to any written communication from persons~~
2 ~~who are neither parties or intervenors to the proceeding,~~
3 ~~nor government officials acting in their official capacity,~~
4 ~~where such communications are promptly placed in the~~
5 ~~public docket file of the proceedings.~~

6 ~~“(e) The prohibitions of this section shall apply at~~
7 ~~such time as the agency shall designate, having due regard~~
8 ~~for the public interest in open decisionmaking by agencies,~~
9 ~~but in no case shall they apply later than the time at which a~~
10 ~~proceeding is noticed for hearing. If the person responsible~~
11 ~~for the communication has knowledge that the proceeding~~
12 ~~will be noticed, the prohibitions of this section shall apply at~~
13 ~~the time of his acquisition of such knowledge. In the case of~~
14 ~~any person who files with an agency any application, petition,~~
15 ~~or other form of request for agency action, the prohibitions~~
16 ~~of this section shall apply, with respect to communications~~
17 ~~with such person, commencing at the time of such filing or~~
18 ~~at the time otherwise provided by this subsection, whichever~~
19 ~~occurs first.~~

20 ~~“(f) Every agency notice of an opportunity for partici-~~
21 ~~pation by interested persons in a hearing shall contain a~~
22 ~~statement as follows:~~

23 ~~“(1) if such notice relates to an on-the-record~~
24 ~~agency proceeding, it shall state that the proceeding is~~
25 ~~subject to the provisions of this section with respect~~
26 ~~to ex parte communications;~~

1 ~~“(2) if such notice relates to an agency proceeding~~
2 ~~not on the record, it shall state that the proceeding is not~~
3 ~~subject to the provisions of this section with respect to~~
4 ~~ex parte communications.~~

5 ~~If a notice of hearing with respect to any proceeding before~~
6 ~~an agency fails to comply with this section, the proceeding~~
7 ~~shall be deemed to be an on-the-record agency proceeding for~~
8 ~~purposes of ex parte communications.~~

9 ~~“(g) Each agency subject to the requirements of this~~
10 ~~section shall, within three hundred and sixty days after the~~
11 ~~enactment of this section, following consultation with the~~
12 ~~Administrative Conference of the United States and pub-~~
13 ~~lished notice in the Federal Register of at least thirty days~~
14 ~~and opportunity for written comment, promulgate regulations~~
15 ~~to implement the requirements of this section. Any citizen or~~
16 ~~person resident in the United States may bring a proceeding~~
17 ~~in the United States Court of Appeals for the District of~~
18 ~~Columbia Circuit—~~

19 ~~“(1) to require any agency to promulgate regula-~~
20 ~~tions if the agency has not promulgated such regulations~~
21 ~~within the time period specified; or~~

22 ~~“(2) to set aside agency regulations issued pursuant~~
23 ~~to this subsection that are not in accord with the require-~~
24 ~~ments of this section, and to require the promulgation~~
25 ~~of regulations that are in accord with this section.~~

1 “~~(h)~~ Nothing in this section shall be construed to per-

2 mit any communication which is prohibited by any other

3 provision of law, or to prohibit any agency from adopting,

4 by rule or otherwise, prohibitions or regulations governing

5 ex parte communications which are additional to, or more

6 stringent than, the requirements of this section.

7 “ (i) The district courts of the United States shall have

8 jurisdiction to enforce the requirements of subsections (c)

9 and (e) of this section by declaratory judgment, injunctive

10 relief, or otherwise. The action may be brought by any

11 citizen of or person resident in the United States. The

12 action shall be brought in the district wherein the plaintiff

13 resides or has his principal place of business, or where the

14 agency in question has its headquarters. Where a person

15 other than an agency, agency member, administrative judge,

16 or employee is alleged to have participated in a violation of

17 the requirements of this section, such person may, but need

18 not, be joined as a party defendant; for purposes of joining

19 such person as a party defendant, service may be had on

20 such person in any district. Among other forms of equitable

21 relief, the court may require that any ex parte communica-

22 tion made or received in violation of the requirements of this

23 section be published, and, having due regard for orderly

24 administration and the public interest, may set aside any

25 agency action taken in a proceeding where the violation

1 occurred. The jurisdiction of the district courts under this
 2 subsection shall be concurrent with that of any other court
 3 otherwise authorized by law to review agency action. Any
 4 such court may, at the application of any person otherwise
 5 properly a party to a proceeding before such court to review
 6 an agency action, inquire into asserted violations by the
 7 agency of the requirements of this section, and afford the
 8 relief authorized by this section in the case of proceedings
 9 by district courts.

10 “(j) In any action brought pursuant to subsection (g)
 11 and (i) of this section, cost of litigation (including reason-
 12 able fees for attorneys and expert witnesses) may be appor-
 13 tioned to the original parties or their successors in interest
 14 whenever the court determines such award is appropriate.”

15 SEC. 203. This title and the amendments made by this
 16 title do not authorize withholding of information or limit the
 17 availability of records to the public except as provided in this
 18 title. This title does not authorize any information to be
 19 withheld from Congress.

20 SECTION 1. SHORT TITLE.—This Act may be cited as
 21 the “Government in the Sunshine Act”.

22 SEC. 2. DECLARATION OF POLICY.—It is hereby de-
 23 clared to be the policy of the United States that the public
 24 is entitled to the fullest practicable information regarding
 25 the decisionmaking processes of the Federal Government.

1 *It is the purpose of this Act to provide the public with such*
 2 *information, while protecting the rights of individuals and*
 3 *the ability of the Government to carry out its responsibilities.*

4 *SEC. 3. DEFINITIONS.—For purposes of this Act the*
 5 *term, “person” includes an individual, partnership, cor-*
 6 *poration, association, or public or private organization other*
 7 *than an agency.*

8 ~~*TITLE I—CONGRESSIONAL PROCEDURES*~~

9 ~~*SEC. 101. SENATE COMMITTEE MEETINGS.—(a) The*~~
 10 ~~*Legislative Reorganization Act of 1946 is amended—*~~

11 ~~*(1) by striking out the first sentence of section*~~
 12 ~~*133(b);*~~

13 ~~*(2) by adding after section 133B the following:*~~

14 ~~*“OPEN SENATE COMMITTEE MEETINGS*~~

15 ~~*“SEC. 133C. Each meeting of a standing, select, or*~~
 16 ~~*special committee of the Senate, or any subcommittee thereof,*~~
 17 ~~*shall be open to the public, except that a portion or portions*~~
 18 ~~*of any such meeting may be closed to the public if the commit-*~~
 19 ~~*tee or subcommittee, as the case may be, determines by record*~~
 20 ~~*vote of a majority of the members of the committee or sub-*~~
 21 ~~*committee present that the matters to be discussed at such*~~
 22 ~~*portion or portions—*~~

23 ~~*“(1) will disclose matters necessary to be kept secret*~~
 24 ~~*in the interests of national defense or the foreign policy*~~
 25 ~~*of the United States;*~~

~~“(2) will relate solely to matters of committee staff personnel or internal staff management or procedure;~~

~~“(3) will tend to charge an individual with crime or misconduct, to disgrace or injure the professional standing of an individual, or otherwise to expose an individual to public contempt or obloquy, or will represent a clearly unwarranted invasion of the privacy of an individual;~~

~~“(4) will disclose the identity of any informer or law enforcement agent or will disclose any information relating to the investigation or prosecution of any violation of law that is required to be kept secret in the interests of effective law enforcement; or~~

~~“(5) will disclose information relating to the trade secrets or financial or commercial information pertaining specifically to a given person if—~~

~~“(A) an Act of Congress requires the information to be kept confidential by Government officers and employees; or~~

~~“(B) the information has been obtained by the Government on a confidential basis, and is required to be kept secret in order to prevent undue injury to the competitive position of such person.—~~

~~This section shall not apply to meetings to conduct hearings.”.~~

~~(b) Paragraph 7(b) of Rule XXV of the Standing Rules of the Senate is repealed.~~

~~(c) Title I of the table of contents of the Legislative Reorganization Act of 1946 is amended by inserting immediately below item 133B the following:~~

~~"133C. Open Senate committee meetings."~~

~~SEC. 102. HOUSE OF REPRESENTATIVES COMMITTEE MEETINGS.—Clause 2(g)(1) of Rule XI of the Rules of the House of Representatives is amended to read as follows:~~

~~"(g)(1) Each meeting of a standing, select, or special committee or subcommittee, shall be open to the public, except that a portion or portions of any such meeting may be closed to the public if the committee or subcommittee, as the case may be, determines by record vote of a majority of the members of the committee or subcommittee present that the matters to be discussed at such portion or portions—~~

~~"(A) will disclose matters necessary to be kept secret in the interests of national defense or the foreign policy of the United States;~~

~~"(B) will relate solely to matters of committee staff personnel or internal staff management or procedure;~~

~~"(C) will tend to charge an individual with crime or misconduct, to disgrace or injure the professional standing of an individual, or otherwise to expose an individual to public contempt or obloquy, or will represent a clearly unwarranted invasion of the privacy of an individual;—~~

~~“(D) will disclose the identity of any informer or law enforcement agent or will disclose any information relating to the investigation or prosecution of any violation of law that is required to be kept secret in the interests of effective law enforcement; or~~

~~“(E) will disclose information relating to the trade secrets or financial or commercial information pertaining specifically to a given person if—~~

~~“(i) an Act of Congress requires the information to be kept confidential by Government officers and employees; or~~

~~“(ii) the information has been obtained by the Government on a confidential basis, and is required to be kept secret in order to prevent undue injury to the competitive position of such person.~~

~~This clause shall not apply to meetings to conduct hearings.”.~~

~~SEC. 103. (a) CONFERENCE COMMITTEES. The Legislative Reorganization Act of 1946 is amended by inserting after section 133C, as added by section 101(a) of this Act, the following new section:~~

~~“OPEN CONFERENCE COMMITTEE MEETINGS~~

~~“SEC. 133D. Each conference committee between the Senate and the House of Representatives shall be open to the public except when the managers of either the Senate~~

1 ~~or the House of Representatives in open session determine,~~
 2 ~~by a rolleall vote of a majority of those managers present,~~
 3 ~~that all or part of the remainder of the meeting on the day~~
 4 ~~of the vote shall be closed to the public.”.~~

5 ~~(b) Title I of the table of contents of the Legislative Re-~~
 6 ~~organization Act of 1946 is amended by inserting immedi-~~
 7 ~~ately below item 133C, as added by section 101(c) of this~~
 8 ~~Act, the following:~~

~~“133D. Open conference committee meetings.”.~~

9 ~~SEC. 104. (a) JOINT COMMITTEES. The Legislative~~
 10 ~~Reorganization Act of 1946 is amended by inserting after~~
 11 ~~section 133D, as added by section 102(a) of this Act, the~~
 12 ~~following new section:~~

13 ~~“OPEN JOINT COMMITTEE MEETINGS~~

14 ~~“SEC. 133E. Each meeting of a joint committee of the~~
 15 ~~Senate and House of Representatives, or any subcommittee~~
 16 ~~thereof, shall be open to the public, except that a portion or~~
 17 ~~portions of any such meeting may be closed to the public if~~
 18 ~~the committee or subcommittee, as the case may be, determines~~
 19 ~~by record vote of a majority of the members of the committee~~
 20 ~~or subcommittee present that the matters to be discussed or~~
 21 ~~the testimony to be taken at such portion or portions—~~

22 ~~“(1) will disclose matters necessary to be kept~~

1 ~~secret in the interests of national defense or the foreign~~
2 ~~policy of the United States;~~

3 ~~“(2) will relate solely to matters of committee staff~~
4 ~~personnel or internal staff management or procedure;~~

5 ~~“(3) will tend to charge an individual with crime~~
6 ~~or misconduct, to disgrace or injure the professional~~
7 ~~standing of an individual, or otherwise to expose an~~
8 ~~individual to public contempt or obloquy, or will represent~~
9 ~~a clearly unwarranted invasion of the privacy of an~~
10 ~~individual;~~

11 ~~“(4) will disclose the identity of any informer or~~
12 ~~law enforcement agent or will disclose any information~~
13 ~~relating to the investigation or prosecution of any viola-~~
14 ~~tion of law that is required to be kept secret in the in-~~
15 ~~terests of effective law enforcement; or—~~

16 ~~“(5) will disclose information relating to the trade~~
17 ~~secrets or financial or commercial information pertaining~~
18 ~~specifically to a given person if—~~

19 ~~“(A) an Act of Congress requires the informa-~~
20 ~~tion to be kept confidential by Government officers~~
21 ~~and employees; or~~

22 ~~“(B) the information has been obtained by the~~
23 ~~Government on a confidential basis, and is required~~
24 ~~to be kept secret in order to prevent undue injury to~~
25 ~~the competitive position of such person.~~

1 ~~This section shall not apply to meetings to conduct hear-~~
 2 ~~ings.”.~~

3 ~~(b) Title I of the table of contents of the Legislative Re-~~
 4 ~~organization Act of 1946 is amended by inserting immedi-~~
 5 ~~ately below item 133D, as added by section 103(b) of this~~
 6 ~~Act, the following:~~

~~“133E. Open joint committee meetings.”.~~

7 ~~SEC. 105. EXERCISE OF RULEMAKING POWERS. The~~
 8 ~~provisions of this title are enacted by the Congress—~~

9 ~~(1) as an exercise of the rulemaking power of the~~
 10 ~~Senate and the House of Representatives, respectively,~~
 11 ~~and as such they shall be considered as part of the rules~~
 12 ~~of each House, respectively, or of that House to which~~
 13 ~~they specifically apply, and such rules shall supersede~~
 14 ~~other rules only to the extent that they are inconsistent~~
 15 ~~therewith; and~~

16 ~~(2) with full recognition of the constitutional right~~
 17 ~~of either House to change such rules (so far as relating~~
 18 ~~to such House) at any time, in the same manner, and to~~
 19 ~~the same extent as in the case of any other rule of such~~
 20 ~~House.~~

21 TITLE II—AGENCY PROCEDURES

22 SEC. 201. (a) This section applies, according to the
 23 provisions thereof, to the Federal Election Commission and
 24 to any agency, as defined in section 551(1) of title 5, United

1 *States Code, where the collegial body comprising the agency*
2 *consists of two or more individual members, at least a major-*
3 *ity of whom are appointed to such position by the President*
4 *with the advice and consent of the Senate. Except as provided*
5 *in subsection (b), all meetings of such collegial body, or of*
6 *a subdivision thereof authorized to take action on behalf of*
7 *the agency, shall be open to the public. For purposes of this*
8 *section, a meeting means the deliberations of at least the*
9 *number of individual agency members required to take action*
10 *on behalf of the agency where such deliberations concern the*
11 *joint conduct or disposition of official agency business.*

12 *(b) Except where the agency finds that the public in-*
13 *terest requires otherwise, (1) subsection (a) shall not apply*
14 *to any agency meeting, or any portion of an agency meeting,*
15 *or to any meeting, or any portion of a meeting, of a sub-*
16 *division thereof authorized to take action on behalf of the*
17 *agency, and, (2) the requirements of subsections (c) and*
18 *(d) shall not apply to any information pertaining to such*
19 *meeting otherwise required by this section to be disclosed to*
20 *the public, where the agency, or the subdivision thereof con-*
21 *ducting the meeting, properly determines that such portion*
22 *or portions of its meeting, or such information, can be reason-*
23 *ably expected to—*

24 *(1) disclose matters (A) specifically authorized*
25 *under criteria established by an Executive order to be*

1 *kept secret in the interests of national defense or foreign*
2 *policy and (B) are in fact properly classified pursuant*
3 *to such Executive order;*

4 *(2) relate solely to the agency's own internal*
5 *personnel rules and practices;*

6 *(3) disclose information of a personal nature*
7 *where disclosure would constitute a clearly unwarranted*
8 *invasion of personal privacy;*

9 *(4) involve accusing any person of a crime, or*
10 *formally censuring any person;*

11 *(5) disclose information contained in investi-*
12 *gatory records compiled for law enforcement purposes,*
13 *but only to the extent that the disclosure would (A)*
14 *interfere with enforcement proceedings, (B) deprive*
15 *a person of a right to a fair trial or an impartial*
16 *adjudication, (C) constitute an unwarranted invasion*
17 *of personal privacy, (D) disclose the identity of a con-*
18 *fidential source, (E) in the case of a record compiled*
19 *by a criminal law enforcement authority in the course*
20 *of a criminal investigation, or by an agency conducting*
21 *a lawful national security intelligence investigation, dis-*
22 *close confidential information furnished only by the confi-*
23 *dential source, (F) disclose investigative techniques and*
24 *procedures, or (G) endanger the life or physical safety*
25 *of law enforcement personnel;*

1 (6) *disclose trade secrets, or financial or com-*
2 *mercial information obtained from any person, where*
3 *such trade secrets or other information could not be ob-*
4 *tained by the agency without a pledge of confidentiality,*
5 *or where such information must be withheld from the*
6 *public in order to prevent substantial injury to the com-*
7 *petitive position of the person to whom such information*
8 *relates;*

9 (7) *disclose information which must be withheld*
10 *from the public in order to avoid premature disclosure of*
11 *an action or a proposed action by—*

12 (A) *an agency which regulates currencies,*
13 *securities, commodities, or financial institutions*
14 *where such disclosure would (i) lead to serious*
15 *financial speculation in currencies, securities, or*
16 *commodities, or (ii) seriously endanger the stability*
17 *of any financial institution;*

18 (B) *any agency where such disclosure would*
19 *seriously frustrate implementation of the proposed*
20 *agency action, or private action contingent thereon;*
21 *or*

22 (C) *any agency relating to the purchase by*
23 *such agency of real property.*

24 *This paragraph shall not apply in any instance where*
25 *the agency has already disclosed to the public the con-*

1 *tent or nature of its proposed action, or where the agency*
2 *is required by law to make such disclosure on its own*
3 *initiative prior to taking final agency action on such*
4 *proposal;*

5 *(8) disclose information contained in or related to*
6 *examination, operating, or condition reports prepared by,*
7 *on behalf of, or for the use of an agency responsible*
8 *for the regulation or supervision of financial institutions;*

9 *(9) specifically concern the agency's participation*
10 *in a civil action in Federal or State court, or the initia-*
11 *tion, conduct, or disposition by the agency of a particular*
12 *case of formal agency adjudication pursuant to the proce-*
13 *dures in section 554 of title 5, United States Code, or*
14 *otherwise involving a determination on the record after*
15 *opportunity for a hearing; or*

16 *(10) disclose information required to be withheld*
17 *from the public by any other statute establishing particu-*
18 *lar criteria or referring to particular types of*
19 *information.*

20 *(c)(1) Action under subsection (b) shall be taken only*
21 *when a majority of the entire membership of the agency, or*
22 *of the subdivision thereof authorized to conduct the meeting*
23 *on behalf of the agency, votes to take such action. A separate*
24 *vote of the agency members, or the members of a subdivision*
25 *thereof, shall be taken with respect to each agency meeting a*

1 portion or portions of which are proposed to be closed to the
2 public pursuant to subsection (b), or with respect to any
3 information which is proposed to be withheld under subsec-
4 tion (b). A single vote may be taken with respect to a series
5 of meetings, a portion or portions of which are proposed to
6 be closed to the public, or with respect to any information
7 concerning such series of meetings, so long as each meeting in
8 such series involves the same particular matters, and is
9 scheduled to be held no more than thirty days after the initial
10 meeting in such series. The vote of each agency member par-
11 ticipating in such vote shall be recorded and no proxies shall
12 be allowed. Whenever any person whose interests may be
13 directly affected by a meeting requests that the agency close
14 a portion or portions of the meeting to the public for any of
15 the reasons referred to in paragraphs (3), (4), or (5) of
16 subsection (b), the agency shall vote whether to close such
17 meeting, upon request of any one of its members. Within one
18 day of any vote taken pursuant to this paragraph, the agency
19 shall make publicly available a written copy of such vote.

20 (2) If a meeting or portion thereof is closed to the
21 public, the agency shall, within one day of the vote taken
22 pursuant to paragraph (1) of this subsection, make publicly
23 available a full written explanation of its action closing the
24 meeting, or portion thereof, together with a list of all persons
25 expected to attend the meeting, and their affiliation.

1 (3) *Any agency, a majority of whose meetings will*
2 *properly be closed to the public, in whole or in part, pursuant*
3 *to paragraphs (6), (7)(A), (8), or (9) of subsection (b),*
4 *or any combination thereof, may provide by regulation for*
5 *the closing of such meetings, or portion of such meetings, so*
6 *long as a majority of the members of the agency, or of the*
7 *subdivision thereof conducting the meeting, votes at the begin-*
8 *ning of such meeting, or portion thereof, to close the meeting,*
9 *and a copy of such vote is made available to the public. The*
10 *provisions of this subsection, and subsection (d), shall not*
11 *apply to any meeting to which such regulations apply: Pro-*
12 *vided, That the agency shall, except to the extent that the*
13 *provisions of subsection (b) may apply, provide the public*
14 *with public announcement of the date, place, and subject mat-*
15 *ter of the meeting at the earliest practicable opportunity.*

16 (d) *In the case of each meeting, the agency shall make*
17 *public announcement, at least one week before the meeting,*
18 *of the date, place, and subject matter of the meeting, whether*
19 *open or closed to the public, and the name and phone number*
20 *of the official designated by the agency to respond to requests*
21 *for information about the meeting. Such announcement*
22 *shall be made unless a majority of the members of the agency.*
23 *or of the members of the subdivision thereof conducting the*
24 *meeting, determines by a vote that agency business requires*
25 *that such meetings be called at an earlier date, in which case*

1 the agency shall make public announcement of the date, place,
2 and subject matter of such meeting, and whether open or
3 closed to the public, at the earliest practicable opportunity.
4 The subject matter of a meeting, or the determination of the
5 agency to open or close a meeting, or portion of a meeting,
6 to the public, may be changed following the public announce-
7 ment required by this paragraph if, (1) a majority of the
8 entire membership of the agency, or of the subdivision
9 thereof conducting the meeting, determines by a vote that
10 agency business so requires, and that no earlier announce-
11 ment of the change was possible, and, (2) the agency pub-
12 licly announces such change at the earliest practicable oppor-
13 tunity. Immediately following the public announcement re-
14 quired by this paragraph, notice of such announcement shall
15 also be submitted for publication in the Federal Register.

16 (e) A complete transcript or electronic recording ade-
17 quate to fully record the proceedings shall be made of each
18 meeting, or portion of a meeting, closed to the public, ex-
19 cept for a meeting, or portion of a meeting, closed to the
20 public pursuant to paragraph (9) of subsection (b). The
21 agency shall make promptly available to the public, in a place
22 easily accessible to the public, the complete transcript or elec-
23 tronic recording of the discussion at such meeting of any
24 item on the agenda, or of the testimony of any witness re-
25 ceived at such meeting, where no significant portion of such

1 *discussion or testimony contains any information specified*
2 *in paragraphs (1) through (10) of subsection (b). Copies*
3 *of such transcript, or a transcription of such electronic re-*
4 *cording disclosing the identity of each speaker, shall be fur-*
5 *nished to any person at the actual cost of duplication or*
6 *transcription. The agency shall maintain a complete ver-*
7 *batim copy of the transcript, or a complete electronic record-*
8 *ing of each meeting, or portion of a meeting, closed to the*
9 *public, for a period of at least two years after such meeting,*
10 *or until one year after the conclusion of any agency pro-*
11 *ceeding with respect to which the meeting, or a portion thereof,*
12 *was held, whichever occurs later.*

13 *(f) Each agency subject to the requirements of this sec-*
14 *tion shall, within one hundred and eighty days after the en-*
15 *actment of this Act, following consultation with the Office of*
16 *the Chairman of the Administrative Conference of the United*
17 *States and published notice in the Federal Register of at least*
18 *thirty days and opportunity for written comment by any*
19 *persons, promulgate regulations to implement the require-*
20 *ments of subsections (a) through (e) of this section. Any*
21 *person may bring a proceeding in the United States Dis-*
22 *trict Court for the District of Columbia to require an agency*
23 *to promulgate such regulations if such agency has not pro-*
24 *mulgated such regulations within the time period specified*
25 *herein. Any person may bring a proceeding in the United*

1 *States Court of Appeals for the District of Columbia to set*
2 *aside agency regulations issued pursuant to this subsection*
3 *that are not in accord with the requirements of subsections (a)*
4 *through (e) of this section, and to require the promulga-*
5 *tion of regulations that are in accord with such subsections.*

6 *(g) The district courts of the United States have juris-*
7 *isdiction to enforce the requirements of subsections (a) through*
8 *(e) of this section by declaratory judgment, injunctive relief,*
9 *or other relief as may be appropriate. Such actions may be*
10 *brought by any person against an agency or its members*
11 *prior to, or within sixty days after, the meeting out of which*
12 *the violation of this section arises, except that if public an-*
13 *nouncement of such meeting is not initially provided by the*
14 *agency in accordance with the requirements of this section,*
15 *such action may be instituted pursuant to this section at any*
16 *time prior to sixty days after any public announcement of*
17 *such meeting. Before bringing such action, the plaintiff*
18 *shall first notify the agency of his intent to do so, and allow*
19 *the agency a reasonable period of time, not to exceed ten*
20 *days, to correct any violation of this section, except that*
21 *such reasonable period of time shall not be held to exceed*
22 *two working days where notification of such violation is*
23 *made prior to a meeting which the agency has voted to close.*
24 *Such actions may be brought in the district wherein the*
25 *plaintiff resides, or has his principal place of business, or*

1 where the agency in question has its headquarters. In such
2 actions a defendant shall serve his answer within twenty days
3 after the service of the complaint. The burden is on the
4 defendant to sustain his action. In deciding such cases the
5 court may examine in camera any portion of a transcript or
6 electronic recording of a meeting closed to the public, and
7 may take such additional evidence as it deems necessary. The
8 court, having due regard for orderly administration and the
9 public interest, as well as the interests of the party, may
10 grant such equitable relief as it deems appropriate, includ-
11 ing granting an injunction against future violations of this
12 section, or ordering the agency to make available to the public
13 the transcript or electronic recording of any portion of a
14 meeting improperly closed to the public. Except to the extent
15 provided in subsection (h) of this section, nothing in this sec-
16 tion confers jurisdiction on any district court to set aside
17 or invalidate any agency action taken or discussed at an
18 agency meeting out of which the violation of this section
19 arose.

20 (h) Any Federal court otherwise authorized by law to
21 review agency action may, at the application of any person
22 properly participating in the proceeding pursuant to other
23 applicable law, inquire into violations by the agency of the
24 requirements of this section, and afford any such relief as it
25 deems appropriate.

1 (i) The court may assess against any party reason-
2 able attorney fees and other litigation costs reasonably in-
3 curred by any other party who substantially prevails in any
4 action brought in accordance with the provisions of sub-
5 section (f), (g), or (h) of this section. Costs may be
6 assessed against an individual member of an agency only in
7 the case where the court finds such agency member has
8 intentionally and repeatedly violated this section, or against
9 the plaintiff where the court finds that the suit was initiated
10 by the plaintiff for frivolous or dilatory purposes. In the
11 case of apportionment of costs against an agency, the costs
12 may be assessed by the court against the United States.

13 (j) The agencies subject to the requirements of this
14 section shall annually report to Congress regarding their
15 compliance with such requirements, including a tabulation
16 of the total number of agency meetings open to the public,
17 the total number of meetings closed to the public, the rea-
18 sons for closing such meetings, and a description of any
19 litigation brought against the agency under this section.

20 SEC. 202. (a) Section 557 of title 5, United States
21 Code, is amended by adding at the end thereof the following
22 new subsection:

23 “(d) In any agency proceeding which is subject to sub-
24 section (a) of this section, except to the extent required for
25 the disposition of ex parte matters as authorized by law—

1 “(1) no interested person outside the agency shall
2 make or knowingly cause to be made to any member of
3 the body comprising the agency, administrative law
4 judge, or other employee who is or may reasonably be
5 expected to be involved in the decisional process of the
6 proceeding, an ex parte communication relevant to the
7 merits of the proceeding;

8 “(2) no member of the body comprising the agency,
9 administrative law judge, or other employee who is or
10 may reasonably be expected to be involved in the decisional
11 process of the proceeding, shall make or knowingly
12 cause to be made to an interested person outside the
13 agency an ex parte communication relevant to the merits
14 of the proceeding;

15 “(3) a member of the body comprising the agency,
16 administrative law judge, or other employee who is or
17 may reasonably be expected to be involved in the deci-
18 sional process of such proceeding who receives, or who
19 makes, a communication in violation of this subsection,
20 shall place on the public record of the proceeding:

21 “(A) written communications transmitted in
22 violation of this subsection;

23 “(B) memorandums stating the substance of all
24 oral communications occurring in violation of this
25 subsection; and

1 “(C) responses to the materials described in sub-
2 paragraphs (A) and (B) of this subsection;

3 “(4) upon receipt of a communication knowingly
4 made by a party, or which was knowingly caused to be
5 made by a party in violation of this subsection; the
6 agency, administrative law judge, or other employee
7 presiding at the hearing may, to the extent consistent
8 with the interests of justice and the policy of the under-
9 lying statutes, require the person or party to show cause
10 why his claim or interest in the proceeding should not
11 be dismissed, denied, disregarded, or otherwise adversely
12 affected by virtue of such violation;

13 “(5) the prohibitions of this subsection shall apply
14 at such time as the agency may designate, but in no case
15 shall they apply later than the time at which a proceeding
16 is noticed for hearing unless the person responsible for
17 the communication has knowledge that it will be noticed,
18 in which case the prohibitions shall apply at the time of
19 his acquisition of such knowledge.”.

20 (b) The second sentence of section 554(d) of title 5,
21 United States Code, is amended to read as follows: “Such
22 employee may not be responsible to or subject to the super-
23 vision or direction of an employee or agent engaged in the
24 performance of investigative or prosecuting functions for an
25 agency.”.

1 (c) Section 551 of title 5, United States Code, is
2 amended—

3 (1) by striking out “and” at the end of paragraph
4 (12);

5 (2) by striking out the “act.” at the end of para-
6 graph (13) and inserting in lieu thereof “act; and”.

7 (3) by adding at the end thereof the following new
8 paragraph:

9 “(14) ‘ex parte communication’ means an oral or
10 written communication not on the public record with
11 respect to which reasonable prior notice to all parties is
12 not given.”.

13 (d) Section 556(d) of title 5, United States Code, is
14 amended by inserting between the third and fourth sentences
15 thereof the following new sentence: “The agency may, to the
16 extent consistent with the interests of justice and the policy
17 of the underlying statutes administered by the agency, con-
18 sider a violation of section 557(d) of this title sufficient
19 grounds for a decision adverse to a party who has knowingly
20 committed such violation or knowingly caused such violation
21 to occur.”.

22 SEC. 203. (a) Except as specifically provided by section
23 201, nothing in section 201 confers any additional rights
24 on any person, or limits the present rights of any such
25 person, to inspect or copy, under section 552 of title 5,

1 *United States Code, any documents or other written ma-*
2 *terial within the possession of any agency. In the case of*
3 *any request made pursuant to section 552 of title 5,*
4 *United States Code, to copy or inspect the transcripts*
5 *or electronic recordings described in section 201(e),*
6 *the provisions of this Act shall govern whether such tran-*
7 *scripts or electronic recordings shall be made available in*
8 *accordance with such request. The requirements of chapter*
9 *33, of title 44, United States Code, shall not apply to the*
10 *transcripts and electronic recordings described in section 201*
11 *(e). This title does not authorize any information to be with-*
12 *held from Congress.*

13 *(b) Nothing in section 201 authorizes any agency to*
14 *withhold from any individual any record, including tran-*
15 *scripts or electronic recordings required by this Act, which*
16 *is otherwise accessible to that individual under section 552a*
17 *of title 5, United States Code.*

18 *SEC. 204. The provisions of this title shall become ef-*
19 *fective one hundred and eighty days after the date on which*
20 *this Act is enacted, except that the provisions of section 201*
21 *requiring the issuance of regulations to implement such sec-*
22 *tion shall become effective upon enactment.*

94TH CONGRESS
1ST SESSION

S. 5

[Report No. 94-354]

[Report No. 94-381]

A BILL

To provide that meetings of Government agencies and of congressional committees shall be open to the public, and for other purposes.

By Mr. CHILES, Mr. ABOUREZK, Mr. BAYH, Mr. BEALL, Mr. BIDEN, Mr. BROCK, Mr. BROOKE, Mr. CASE, Mr. CHURCH, Mr. CLARK, Mr. CRANSTON, Mr. GRAVEL, Mr. GARY W. HART, Mr. PHILIP A. HART, Mr. HASKELL, Mr. HATFIELD, Mr. HATHAWAY, Mr. HELMS, Mr. HOLLINGS, Mr. HUMPHREY, Mr. JACKSON, Mr. LEAHY, Mr. MCGOVERN, Mr. MANSFIELD, Mr. MATHIAS, Mr. METCALF, Mr. MONDALE, Mr. MUSKIE, Mr. NELSON, Mr. NUNN, Mr. PACKWOOD, Mr. PERCY, Mr. PROXMIRE, Mr. RIBICOFF, Mr. ROTH, Mr. STAFFORD, Mr. STONE, Mr. SYMINGTON, Mr. TUNNEY, and Mr. WEICKER

JANUARY 15, 1975

Read twice and referred to the Committee on
Government Operations

JULY 31, 1975

Reported with an amendment

AUGUST 1, 1975

Referred jointly to the Committees on Rules and Administration and the Judiciary with instructions to report back not later than September 19, 1975

SEPTEMBER 18 (legislative day, SEPTEMBER 11), 1975

Reported with an additional amendment